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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,958	06/20/2003	Mitchell H. Herring	4927.001	6575
7590	05/19/2005		EXAMINER	
Mark D. Bowen Stearns Weaver Miller Suite 1900 200 East Broward Boulevard Fort Lauderdale, FL 33301			PRICE, CARL D	
			ART UNIT	PAPER NUMBER
			3749	
DATE MAILED: 05/19/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/600,958

Applicant(s)

HERRING, MITCHELL H.

Examiner

CARL D. PRICE

Art Unit

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 4 and 8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4 and 8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### Specification

The disclosure is objected to because of the following informalities: The information referencing the parent application, on page 1 of the specification, should be updated.

Appropriate correction is required.

### Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

he has abandoned the invention.

the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States.

the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

In regard to the claims, the recitation “for propping open the cover of a barbecue grill of the type having a fire box and a cover pivotally connected to the firebox” has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). Even though claims 1 and 4, for example, include recitations such as “for engaging the barbecue grill cover” the body of the claim does not depend on the preamble for completeness since neither the preamble or the body of the body of the claim positively recite a “grill cover” and “grill firebox”, and the preamble merely characterizes the scope of the claimed invention as “an apparatus for ... , said apparatus comprising”. In addition, the recitation “for propping open the cover of a barbecue grill of the type having a fire box and a cover pivotally connected to the firebox” is deemed a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to

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the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

**Claim 7 is rejected under 35 U.S.C. 102(b)**

Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by US454096 (WANLESS).

US454096 (WANLESS) shows and discloses apparatus for propping open a cover, the apparatus including:

- means (J) for engaging the cover (A);
- means (not referenced; adjacent "C") for engaging a cover support (C);
- the means for engaging the support includes a first elongate arm (E) having a perpendicularly projecting support engaging flange (not referenced; adjacent "C");
- and
- the means for engaging the cover (A) includes a second elongate arm (G) having a perpendicularly projecting cover engaging flange (J); and
- means for pivotally connecting the means for engaging the cover and the means for engaging support;
- wherein the means for pivotally connecting the means for engaging a barbecue grill cover and the means for engaging the support includes a telescopically adjustable pivot pin (Figure 3).

**Claims 1-6 are rejected under 35 U.S.C. 102(b)**

Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by US3674299 (KELLEY).

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US3674299 (KELLEY) shows and discloses apparatus for propping open a cover, the apparatus including:

- means (24) for engaging the cover (13);
- means (24) for engaging a cover support (14);
- the means for engaging the support includes a first elongate arm (16) having a perpendicularly projecting support engaging flange (24); and
- the means for engaging the cover (13) includes a second elongate arm (15) having a perpendicularly projecting cover engaging flange (24); and
- means (22) for pivotally connecting the means for engaging the cover and the means for engaging support; and
- wherein the first elongate arm has an end portion having an arc-shaped edge (18) defining a plurality of notches (19) and the second elongate arm has an end portion defining a projecting member (19) sized to be received within the notches.

**Claims 1-6 are rejected under 35 U.S.C. 102(b)**

Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by US4339844 (SHATTERS).

US4339844 (SHATTERS) shows and discloses apparatus for propping open a cover, the apparatus including:

- means (22,34) for engaging the cover (18);
- means (20,32) for engaging a cover support (14);

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- the means for engaging the support includes a first elongate arm (20) having a perpendicularly projecting support engaging flange (not referenced); and
- the means for engaging the cover (18) includes a second elongate arm (22) having a perpendicularly projecting cover engaging flange (not referenced); and
- means (24) for pivotally connecting the means for engaging the cover and the means for engaging support; and
- wherein the first elongate arm has an end portion having an arc-shaped edge (20) defining a plurality of notches (44) and the second elongate arm has an end portion defining a projecting member (48) sized to be received within the notches.

**Claims 1-7 are rejected under 35 U.S.C. 102(b)**

Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by US3731342 (COUSIN).

US3731342 (COUSIN) shows and discloses apparatus for propping open a cover, the apparatus including:

- means (1) for engaging a first member (4);
- means (2) for engaging a second member (5);
- the means for engaging the first member includes a first elongate arm (1) integrally formed with a perpendicularly projecting flange (1); and
- the means for engaging the second member includes a second elongate arm (2) integrally formed with a perpendicularly projecting flange (2); and

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- means (16, 17) for pivotally connecting the means for engaging the first and second members; and
- wherein the first elongate arm has an end portion having an arc-shaped edge defining a plurality of notches (6) and the second elongate arm has an end portion defining a projecting member (11) sized to be received within the notches;
- wherein the means for pivotally connecting the means for engaging the first and second members includes a telescopically adjustable pivot pin (33).

### **Conclusion**

See the attached PTO FORM for prior art made of record that is not relied upon, which is considered pertinent to applicant's disclosure.

### **USPTO CUSTOMER CONTACT INFORMATION**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Carl D. Price** whose telephone number is **(703) 308-1953**. The examiner can normally be reached on Monday through Friday, between the hours of **6:30 am** and **3:30 pm**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Ira Lazarus** can be reached on **(703) 308-1935**. The fax phone number for the organization where this application or proceeding is assigned is **703-872-9306**.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (**PAIR**) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Carl D. Price', with a stylized flourish extending to the right.

Carl D. Price  
Primary Examiner  
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cp